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GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT1. Responsibility

a. Only the service member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is a basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

b. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

c. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

d. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by SECNAV.

e. The guidelines in this enclosure do not apply to activities of defense criminal investigative organizations and other DoD law enforcement organizations.

2. Definitions

a. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

b. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that, under pertinent official directives, is recognized as a "command."

c. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

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d. Homosexual conduct. A homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

(1) Homosexual Act. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

(2) Statement that a Member is a Homosexual or Bisexual, or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

(3) Homosexual Marriage or Attempted Marriage. When a member has married or attempted to marry a person known to be of the same biological sex.

(4) Propensity to Engage in Homosexual Acts. A likelihood that a person engages in or will engage in homosexual acts, which is more than an abstract preference or desire to engage in homosexual acts.

e. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

### 3. Basis for Conducting Inquiries:

a. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

b. A basis for discharge exists if:

- (1) The service member has engaged in a homosexual act;
- (2) The service member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
- (3) The service member has married or attempted to marry a person of the same sex.

c. Credible information does not exist when:

- (1) The officer is suspected of engaging in homosexual conduct, but there is no credible information as described, to support that suspicion;
- (2) The only information is the opinions of others that an officer is homosexual;
- (3) The inquiry would be based on rumor, suspicion, or capricious claims concerning an officer's sexual orientation; or
- (4) The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

d. Credible information exists when:

- (1) A reliable person states that he or she observed or heard an officer engaging in homosexual acts, or saying that he or she is a homosexual or bisexual, or is married to a member of the same sex;
- (2) A reliable person states that he or she heard or observed an officer make, or discovered that an officer has made a spoken or written statement that a reasonable person would believe was intended to convey the fact that the officer engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

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(3) A reliable person states he or she observed behavior that amounts to a nonverbal statement by an officer that he or she is a homosexual or bisexual; i.e., behavior a reasonable person would believe was intended to convey the statement that the officer engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

#### 4. Procedures

a. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

b. Commanders shall exercise sound discretion in determining if credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

c. Commanders or appointed inquiry officials shall not ask, and service members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in paragraph 3), commanders or appointed inquiry officials may ask service members if they engaged in such conduct. But the service member shall first be advised of the DoD policy on homosexual conduct (and rights under article 31, UCMJ, if applicable). Should the service member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a service member about any information provided by him or her in the course of the fact-finding inquiry or any related proceeding, nor does it provide the service member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the service member, in any proceeding.

d. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

e. A statement by a service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member shall be given an opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

f. The service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

5. Legal Effect. The procedures in this enclosure create no substantive or procedural rights.